U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C- INC.

DATE: MAR. 26, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a manufacturing plastic injection company, seeks to employ the Beneficiary as a senior tool and die maker. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center initially approved the petition. Subsequently, the Director revoked the approval of the petition, concluding that the record did not establish that the Beneficiary has a single, four-year U.S. bachelor's degree or foreign equivalent, as required by the terms for the labor certification and for classification as an advanced degree professional.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary is a member of the professions holding an advanced degree based on his training and work experience.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A. The Employment-Based Immigration Process

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL).[1] *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is June 4, 2015. *See* 8 C.F.R. § 204.5(d).

Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national applies for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

B. Advanced Degree Professional Classification

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2). The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

C. Revocation of a Petition's Approval

After granting a petition, USCIS may revoke the petition's approval "at any time" for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by the record, a director's realization that a petition was erroneously approved may justify revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

Good and sufficient cause exists to issue a notice of intent to revoke where the record at the time of the notice's issuance, if unexplained or unrebutted, would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). Similarly, revocation is proper if the record at the time of the decision, including any explanation or rebuttal evidence provided by a petitioner, warranted a petition's denial. *Id.* at 452.

II. ANALYSIS

A. Beneficiary's Qualifications

The Director revoked the approval of the petition because the record did not establish that the Beneficiary has a single, four-year U.S. bachelor's degree or foreign equivalent, as required by the terms of the labor certification and for the requested classification. Section H of the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Bachelor's degree in mechanical engineering.
H.5. Training: None required.
H.6. Experience in the job offered: 60 months.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: None.

Section J of the labor certification states that the Beneficiary possesses a bachelor's degree in mechanical engineering technology from [redacted] in India, completed in 1982. The record contains a copy of the Beneficiary's Certificate of Course Completion, issued by [redacted] in December 1984, together with results from the [redacted] indicating that the Beneficiary completed a course of study in the trade of tool and die making from September 1978 to September 1982 and passed the [redacted] in November 1982.[2] The record also contains the Beneficiary's [redacted] issued by the [redacted] in July 1997.

The record also contains an evaluation of the Beneficiary's work experience prepared by [redacted]. The evaluation states that the Beneficiary's "professional work experience is equivalent to the U.S. degree of Bachelor of Science in Manufacturing Engineering Technology awarded by a regionally accredited university in the United States." The evaluation equated three

[2] The record does not contain any evidence showing that [redacted] is an accredited university or college in India. The record also does not contain transcripts from [redacted] The record contains no evidence demonstrating that the apprenticeship program alone is equivalent to a U.S. bachelor's degree.

years of experience to one year of education, but that equivalence applies to nonimmigrant H-1B petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).[3] USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

The record also contains an evaluation of the Beneficiary's training and work experience prepared by The evaluation states that the Beneficiary's approximately 22 years of "progressively responsible qualifying work experience" is equivalent to the U.S. degree of "Bachelor of Science in Manufacturing Engineering Technology from an accredited institution of higher education in the United States." This evaluation, like the evaluation, equated three years of experience to one year of education. That equivalence does not apply to immigrant petitions.

When a beneficiary relies on a bachelor's degree and five years of progressive experience for qualification as an advanced degree professional, the degree must be a single U.S. bachelor's (or foreign equivalent) degree. In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold at least a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." In order to qualify as an advanced degree professional under section 203(b)(2) of the Act, the Beneficiary must have a single degree that is the "foreign equivalent degree" of a United States baccalaureate degree. *See* 8 C.F.R. § 204.5(k)(2).

In this case, the Petitioner relies on the Beneficiary's experience as being equivalent to a U.S. bachelor's degree. However, the Petitioner cannot rely on experience alone to qualify the Beneficiary as an advanced degree professional.

Therefore, the evidence in the record is not sufficient to establish that the Beneficiary possesses a degree that is, by itself, the foreign equivalent of a U.S. bachelor's degree. Instead, the Beneficiary possesses credentials that the Petitioner claims are equivalent to a U.S. bachelor's degree. However, for the reasons set forth above, work experience is not a "foreign equivalent degree" within the meaning of 8 C.F.R. § 204.5(k)(2).

[3] The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) defines for purposes of H-1B nonimmigrant visa classification the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience. The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

After reviewing all of the evidence in the record, it is concluded that the Petitioner has not established that the Beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty. Therefore, the Beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act. The Director properly revoked the petition's approval on this basis.

The Petitioner must also establish that the Beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the Beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In this case, the labor certification states that the minimum education required for the offered position is a bachelor's degree in mechanical engineering plus five years of experience. For the reasons explained above, the Petitioner has not established that the Beneficiary possesses the foreign equivalent of a U.S. bachelor's degree. Thus, the Petitioner has also not established that the Beneficiary met the educational requirements of the offered position by the priority date.

B. Professional Occupation

Although not addressed by the Director in his decision, the offered position of senior tool and die maker does not require a professional with an advanced degree. Since the offered position is not one of the occupations listed at section 101(a)(32) of the Act, the Petitioner must establish that it is in an occupation for which a baccalaureate degree is a requirement for entry. 8 C.F.R. § 204.5(k)(2).

According to Section F.2 of the labor certification, the offered position was assigned the O*NET occupational code of 51-4111. O*NET is the occupational classification system used by the DOL. According to O*NET, 68% of people in this occupation hold a post-secondary certificate, 17% hold an associate's degree, and 11% hold a high school diploma or equivalent. O*NET also states that the assigned occupational classification falls within Job Zone Three. *See O*Net Online*, https://www.onetonline.org/link/summary/51-4111.00 (last visited Mar. 1, 2018). A Job Zone is a group of occupations that are similar in how much education, related experience, and/or training people need to do the work. *See O*Net Online*, http://www.onetonline.org/help/online/zones (last visited Mar. 1, 2018). According to the DOL, one or two years of training involving both on-the-job experience and informal training with experienced workers are needed for Job Zone Three occupations. The DOL assigns a standard vocational preparation of 6 to Job Zone Three occupations, which means "[m]ost occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree." *See O*Net Online*,

https://www.onetonline.org/link/summary/51-4111.00 (last visited Mar. 1, 2018). Additionally, the DOL states the following concerning the training and overall experience required for Job Zone Three occupations:

> Previous work-related skill, knowledge, or experience is required for these occupations. For example, an electrician must have completed three or four years of apprenticeship or several years of vocational training, and often must have passed a licensing exam, in order to perform the job.

See id.

Thus, according to the DOL's occupational data, a baccalaureate degree is not required for entry into the occupation of the offered position and the Petitioner has not otherwise demonstrated that a degree is required. Therefore, the offered position is not a professional occupation as defined at 8 C.F.R. § 204.5(k)(2).

C. Ability to Pay the Proffered Wage

Although not discussed by the Director, the Petitioner has not established its ability to pay the proffered wage from the priority date onward. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The proffered wage for the position of senior tool and die maker is $46,280 per year, and the priority date is June 4, 2015. The Petitioner submitted its federal tax return for calendar year 2014, and the Beneficiary's IRS Form W-2, Wage and Tax Statement, for 2015. While the Form W-2 shows that the Petitioner paid the Beneficiary an amount exceeding the proffered wage in 2015, the record does not contain regulatory-prescribed evidence of the Petitioner's ability to pay the proffered wage from 2015 onward. *See id.* (requiring annual reports, federal tax returns, or audited financial statements to establish ability to pay). Thus, the Petitioner has not established its continuing ability to pay the proffered wage from the priority date onward.

III. CONCLUSION

In summary, the Petitioner has not established that the Beneficiary possessed an advanced degree as required by the terms of the labor certification and the requested preference classification.

Therefore, the Beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. The Petitioner has also not established that the offered position requires a professional with an advanced degree, or that it has the continuing ability to pay the proffered wage.

ORDER: The appeal is dismissed.

Cite as *Matter of C- Inc.*, ID# 1077553 (AAO Mar. 26, 2018)